UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ROBERT Novak, d/b/a Pets Warehouse and PetsWarehouse.com

Plaintiff,

No. CV 02 5164 (DRH) (WDW)

-v-

OVERTURE SERVICES, INC, GOOGLE, INC., INNOVATIVE MARKETING SOLUTIONS, INC., d/b/a KANOODLE.COM, NEEPS INC d/b/a THEFERRETSTORE.COM, JOHN HOLDEFEHR d/b/a JUDGE-FOR-YOURSELF.COM, BIOCHEMICS, INC. d/b/a DOCTORDOG.COM,

Defendants.

OVERTURE SERVICES, INC.,

Counter-claimant,

-v-

ROBERT Novak, d/b/a Pets Warehouse and PetsWarehouse.com

Counter-defendant.

DEFENDANT OVERTURE SERVICES, INC.'S FIRST SET OF REQUESTS FOR ADMISSIONS TO PLAINTIFF ROBERT NOVAK D/B/A PETS WAREHOUSE AND PETSWAREHOUSE.COM

Pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure, Defendant, Overture Services, Inc. ("Overture"), by and through its attorneys, hereby propounds the following Requests for Admissions to Plaintiff Robert Novak d/b/a Pets Warehouse and PetsWarehouse.com ("Novak"), to be answered separately and fully in writing and under

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oath within the time required by Rule 26 of the Federal Rules of Civil Procedure and Rule 26 of the Local Rules of the Eastern District of New York, and in accordance with the Definitions and Instructions set forth herein.

INSTRUCTIONS AND DEFINITIONS

The Instructions and Definitions set forth in Overture's First Request for Production of Documents, served concurrently herewith, shall also apply to these Requests. Each matter of which an admission is requested shall be deemed as a separate matter and a separate admission should be supplied for each. If Novak, when answering the foregoing Requests for Admission gives lack of information or knowledge as a reason for failure to admit or deny, Novak should state that he has made reasonable inquiry and that the information known or readily obtainable by Novak is insufficient to enable it to admit or deny

REQUESTS FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 1:

The term "PET" merely describes the animals that use the supplies Novak sells.

REQUEST FOR ADMISSION NO. 2:

The term "PET" is generic for the animals that Novak sells.

REQUEST FOR ADMISSION NO. 3:

The term "PET" means a domesticated animal kept for pleasure.

REQUEST FOR ADMISSION NO. 4:

The term "WAREHOUSE" merely describes a place to store pets or pet supplies.

REQUEST FOR ADMISSION NO. 5:

The term "WAREHOUSE" is generic for a place where pets and pet supplies may be kept.

REQUEST FOR ADMISSION NO. 6:

The term "WAREHOUSE" means a place to store merchandise or commodities.

REQUEST FOR ADMISSION NO. 7:

Novak does not operate an Internet search engine under the Novak Marks.

REQUEST FOR ADMISSION NO. 8:

Overture operates an Internet search engine.

REQUEST FOR ADMISSION NO. 9:

Overture does not operate an Internet search engine under the Novak Marks.

REQUEST FOR ADMISSION NO. 10:

Overture does not sell pets or pet supplies.

REQUEST FOR ADMISSION NO. 11:

Overture does not sell pets or pet supplies under the Novak Marks.

REQUEST FOR ADMISSION NO. 12:

Novak maintains a Web site at www.pets-warehouse.com.

REQUEST FOR ADMISSION NO. 13:

Novak advertises his sale of pets and pet supplies at his Web site www.pets-warehouse.com.

REQUEST FOR ADMISSION NO. 14:

Novak has competitors in the pet and pet supply industry.

REQUEST FOR ADMISSION NO. 15:

Competitors of Novak use the term "PETS" in connection with their sale of pets and/or pet supplies.

REQUEST FOR ADMISSION NO. 16:

Competitors of Novak use the term "WAREHOUSE" in connection with their sale of pets and/or pet supplies.

REQUEST FOR ADMISSION NO. 17:

Novak is aware of no instances of actual consumer confusion between Overture and Novak.

REQUEST FOR ADMISSION NO. 18:

Novak is aware of no instance where someone was actually confused by the sponsored results delivered by Overture for the search term "pets warehouse."

REQUEST FOR ADMISSION NO. 19:

Novak is aware of no instance where someone mistakenly believed that sponsored results supplied by Overture were sponsored by, endorsed by, or affiliated with Novak.

REQUEST FOR ADMISSION NO. 20:

Novak is aware of no instance where someone mistakenly believed that an advertiser bidding on the search term "pets warehouse" with Overture was sponsored by, endorsed by, or affiliated with Novak.

REQUEST FOR ADMISSION NO. 21:

Novak is aware of no instance where the Novak Marks were actually diluted by Overture.

REQUEST FOR ADMISSION NO. 22:

Novak is aware of no instance where the Novak Marks have been blurred in a consumer's mind as a result of Overture's actions.

REQUEST FOR ADMISSION NO. 23:

Novak is aware of no instance where the Novak Marks have been tarnished in a consumer's mind as a result of Overture's actions.

REQUEST FOR ADMISSION NO. 24:

Overture did not sell to third-party advertisers the Novak Marks when the third-party advertisers bid on the search term Novak so that their Web site(s) would appear in the search results in the Overture search engine.

REQUEST FOR ADMISSION NO. 25:

Overture does not own any third-party advertisers that have bid on the search term PETSWAREHOUSE.

REQUEST FOR ADMISSION NO. 26:

Overture does not control any third-party advertisers that have bid on the search term PETSWAREHOUSE.

REQUEST FOR ADMISSION NO. 27:

Novak cannot identify any specific lost sales resulting from Overture's alleged illegal activities as set forth in the Complaint.

REQUEST FOR ADMISSION NO. 28:

Novak cannot identify any specific lost customers resulting from Overture's alleged illegal activities as set forth in the Complaint.

REQUEST FOR ADMISSION NO. 29:

Novak cannot identify any specific lost potential sales resulting from Overture's alleged illegal activities as set forth in the Complaint.

REQUEST FOR ADMISSION NO. 30:

Novak cannot identify any specific lost potential customers resulting from Overture's alleged illegal activities as set forth in the Complaint.

REQUEST FOR ADMISSION NO. 31:

Novak has not identified any third-party advertisers that have bid on the Novak Marks in connection with an Overture search engine and are infringing on any of the Novak Marks.

REQUEST FOR ADMISSION NO. 32:

WIPO is an international non-governmental entity that is partially devoted to the administration of intellectual property rights on the internet.

REQUEST FOR ADMISSION NO. 33:

WIPO issued an Administrative Panel Decision, *Pet Warehouse v. Pets.Com, Inc.*, Case No. D2000-0105.

REQUEST FOR ADMISSION NO. 34:

In WIPO's *Pet Warehouse v. Pets.Com, Inc.* decision, WIPO held that "PET WAREHOUSE" was generic.

REQUEST FOR ADMISSION NO. 35:

In WIPO's *Pet Warehouse v. Pets.Com, Inc.* decision, WIPO held that "PET WAREHOUSE" did not merit trademark protection.

Date: October 27, 2004 By: [signature: Scott Slavick]

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Attorneys for Defendant,
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CERTIFICATE OF SERVICE

I hereby certified that on October 27, 2004, I caused **Defendant Overture Services, Inc.'s First Set of Request for Admissions to Plaintiff Robert Novak d/b/a Pets Warehouse and PetsWarehouse.com** to be dispatched via Overnight Courier to the following:

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